

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

JOHNNY TATE # 444051,)	
)	
Petitioner,)	
)	NO. 1:25-CV-00008
v.)	
)	JUDGE CAMPBELL
GRADY PERRY, <i>Warden</i>,)	MAGISTRATE JUDGE HOLMES
)	
Respondent.)	

ORDER

Petitioner Johnny Tate, an inmate of the South Central Correctional Facility in Clifton, Tennessee, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1). Shortly thereafter, Petitioner filed a Motion for Voluntary Withdrawal (Doc. No. 9) in which he asks the Court to grant dismissal of this action “pursuant to Rule 41.” (*Id.* at PageID# 71).


A plaintiff may voluntarily dismiss a suit without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). “[A] voluntary dismissal without prejudice leaves the situation as if the action had never been filed.” *Sherer v. Construcciones Aeronauticas, S.A.*, 987 F.2d 1246, 1247 (6th Cir. 1993). Rule 41(a) applies to habeas corpus proceedings. *Kelley v. Burton*, No. 2:18-CV-11161, at *1 (E.D. Mich. Aug. 21, 2023) (citing *Williams v. Clarke*, 82 F.3d 270, 272–73 (8th Cir. 1996); *Doster v. Jones*, 60 F. Supp. 2d 1258, 1259 (M.D. Ala. 1999) (citing cases)). *See also* Rule 11, Rules Governing Section 2254 Cases in the United States District Courts (“The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules.”).

Here, Petitioner filed his Motion for Voluntary Withdrawal before Respondent filed an answer or a motion for summary judgment. Indeed, counsel for the Respondent has not yet filed a Notice of Appearance. Thus, dismissal under Rule 41(a)(1)(A)(i) is appropriate. The dismissal will be without prejudice. *See Kelley*, 2023 WL 5835189, at *2 (citing *Markham v. Anderson*, 465 F. Supp. 541, 543 (E.D. Mich. 1980)).

Accordingly, Petitioner's Motion for Voluntary Withdrawal (Doc. No. 9) is **GRANTED**, and the petition is **DISMISSED WITHOUT PREJUDICE**.

Petitioner's other pending motions (Doc. Nos. 2, 3, 4, 7) are **DENIED AS MOOT**.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE